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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,355	01/05/2004	Dario D' Angelo	SVL920030100US1	2233

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KUNZLER & ASSOCIATES  
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SALT LAKE CITY, UT 84111

EXAMINER
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MASKULINSKI, MICHAEL C

ART UNIT	PAPER NUMBER
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2113

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/751,355	<b>Applicant(s)</b> ANGELO ET AL.	
	<b>Examiner</b> Michael C. Maskulinski	<b>Art Unit</b> 2113	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9,11-16,19,21-26 and 29 is/are rejected.
- 7) ☒ Claim(s) 7,8,17,18,27 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **Second Non-Final Office Action**

1. The indicated allowability of claims 5, 6, 10, 15, 16, 20, 25, 26, and 30 (now independent claims 1, 11, and 21) is withdrawn in view of the Office's current interpretation of Markush groups, which was not relied on for the previous rejection.

As far as Markush groups, you only need one of the listed elements.

From MPEP 2131

"When a claim covers several structures or compositions, either generically **or as alternatives**, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." Brown v. 3M, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) [Emphasis Added]

From MPEP 2173.05(h)

Alternative expressions are permitted if they present no uncertainty or ambiguity with respect to the question of scope or clarity of the claims. One acceptable form of alternative expression, which is commonly referred to as a Markush group, recites members as being "selected from the group consisting of A, B and C." See *Ex parte Markush*, 1925 C.D. 126 (Comm'r Pat. 1925).

Thus it is clear that Markush groups are claiming something in the alternative, and it is clear that alternatives in claims are anticipated if any of the alternatives are known in the prior art.

Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5, 6, 9, 11-13, 15, 16, 19, 21-23, 25, 26, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Flores et al., U.S. Patent 6,567,937 B1.

Referring to claims 1, 11, and 21:

- a. In column 2, lines 39-43, Flores et al. disclose a monitor for monitoring one or more trigger states in an application (a monitor configured to detect an error event within a computer application).
- b. In column 2, lines 52-60, Flores et al. disclose that trigger states that are monitored are a normal state, a non-responsive or hung state, or a dead state (an analysis module configured to determine characteristics for the error event).
- c. In column 3, lines 5-14, Flores et al. disclose communicating the determined state and the one or more possible fault recovery actions to a remote user by way of e-mail, voice, facsimile, or pager (an assembler configured to compose a context-sensitive message comprising at least one context-sensitive resource relating to the determined error event characteristics and a transmission module configured to transmit the message to a set of addressees).
- d. In column 3, lines 10-14, Flores et al. disclose using e-mail, voice, and pager (wherein the context-sensitive message is transmitted using e-mail, paging, audio messaging).
- e. With respect to claim 11, in column 5, lines 14-24, Flores et al. disclose a computer readable medium containing instructions to perform the invention of Flores et al.

Referring to claims 2, 12, and 22, in column 2, lines 52-60, Flores et al. disclose that trigger states that are monitored are a non-responsive or hung state or a dead state (wherein the error event comprises an abnormal condition for the computer application).

Referring to claims 3, 13, and 23, in column 3, lines 59-62, Flores et al. disclose that if the specified communications means is e-mail or facsimile, a properly formatted text-based alert message is prepared and transmitted in a conventional manner (wherein the context-sensitive message is generated from a user configurable template).

Referring to claims 5, 15, and 25, in column 2, lines 26-29, Flores et al. disclose alerting a user.

Referring to claims 6, 16, and 17, in column 3, lines 55-57, Flores et al. disclose an alert message encoding the determined state and one or more possible fault recovery actions is generated and transmitted (solutions to previously identified problems).

Referring to claims 9, 19, and 29, in column 3, lines 1-3, Flores et al. disclose that for each state, one or more possible fault recovery actions are specified (wherein the at least one context-sensitive resource is configured to automatically conduct a search based at least in part on at least one characteristic of the error event).

4. Claims 1, 4-6, 11, 14-16, 21, and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Makiyama, US 2003/0056151 A1.

Referring to claims 1, 11, and 21:

- a. In paragraph 0087, Makiyama discloses evaluating a target program (a monitor configured to detect an error event within a computer application).
- b. In paragraph 0088, Makiyama discloses that the evaluator's computer generates error detail information indicating the kind and symptoms of the detected error or defect (an analysis module configured to determine characteristics for the error event).
- c. In paragraph 0088, Makiyama discloses that the evaluator's computer generates error detail information indicating the kind and symptoms of the detected error or defect, and hands over this error detail information and an instruction for generation and sending of an error reporting mail to the error reporting mail generation unit (an assembler configured to compose a context-sensitive message comprising at least one context-sensitive resource relating to the determined error event characteristics).
- d. In paragraph 0089, Makiyama discloses that the error reporting mail generation unit specifies the e-mail address of the administrator identification code included in the administration information (a transmission module configured to transmit the message to a set of addressees).
- e. In paragraph 0089, Makiyama discloses generating an e-mail (wherein the context-sensitive message is transmitted using e-mail).
- f. With respect to claim 11, in paragraph 0037, Makiyama discloses a computer-readable medium with computer instructions to carry out the invention of Makiyama.

Referring to claims 4, 14, and 24, in paragraph 0084, Makiyama discloses an administration information database storing e-mail addresses of the source administrator (wherein the set of addressees comprises a configurable addressee repository that associates characteristics of the error event with one or more addressees).

Referring to claims 5, 15, and 25, in paragraph 0084, Makiyama discloses notifying a system administrator.

Referring to claims 6, 16, and 26, in paragraph 0088, Makiyama discloses that the evaluator's computer generates error detail information indicating the kind and symptoms of the detected error or defect (computer system documentation)

#### ***Allowable Subject Matter***

5. Claims 7, 8, 17, 18, 27, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is 571-272-3649. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael C Maskulinski  
Examiner  
Art Unit 2113